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MEMORANDUM

To: Supervisors of Elections

From: Ron Labasky, Esquire

Date: September 27, 2012

Re: Recent Potential Felon Communication

Many of you have received correspondence asserting that the spreadsheet, which accompanies the correspondence, identifies potential felons who are on the Florida voter registration system. Pursuant to that correspondence, FSASE President Vicki Davis sent a letter to the Department of State yesterday concerning this issue, a copy of which is attached. A comprehensive statewide list of names was apparently presented to the Department in July 2012, and now lists have been provided to the respective counties as a follow-up to that communication in July.

Section 98.075, Florida Statutes, establishes the methodology for identifying voters who are required to be removed from the system. There are specified sources of information which are to be accessed by the Department to insure the voter in question is properly identified prior to removal taking place. With respect to felons, Section 98.075(5), F.S., provides that the Department is to review the specified sources, or any other source which is not specifically

included and make “an initial determination as to whether the information is credible and reliable.” If that conclusion is reached, the Department is to notify the Supervisor and provide a copy of supporting documentation concerning the voter in question. Upon receipt of that notice, the Supervisor is to adhere to the procedures in Section 98.075(7), F.S. It is my opinion that the determination of credibility and reliability is not obviated or eliminated when the source of the information is not specifically specified in Section 98.075(5), F.S. (i.e., some other source), with the result being the immediate initiation of removal procedures pursuant to Section 98.075(7), F.S., within 7 days.

I am attaching an email between Hillsborough County and the Department concerning this issue. Maria Matthews’ response dated September 14, 2012, to Mary Helen Farris concerning the felon list sent by Hillsborough County to the Department, explains the Department’s concerns. Maria’s comments are that the list is of limited accuracy and the Department has had difficulty verifying the information. Consistent with that, they have referred those names to FDLE for evaluation concerning the alleged felony status. I have discussed this matter with Dan Nordby, General Counsel for the Department, and he indicated that would be the Department’s process with respect to any and all of these names received by the Department of State.

On September 21, 2012, Bennett Miller sent a letter to Supervisors concerning the list of possible felons. He indicates that the Department is reviewing the list and will provide additional guidance, and that if a complaint is opened by the state on any person on the list, you will be notified. While, as Supervisor, you have the discretion to review for ineligible registrations, the Department requests you contact it before any steps are taken to begin any removal process.

Miller advised in a subsequent communication, that if any Supervisors have received a list, they could forward that to the Division of Elections for evaluation.

Therefore, based upon the foregoing, I would suggest that if you have received a list of potential felons, that you forward that list to the Division as requested by Mr. Miller. I also would suggest that initiating any type of removal process concerning anyone on that list without additional documentation or verification would not be prudent. It appears, from the initial review undertaken by Maria Matthews, matching and verifying the names on these lists is problematic, and does not yield high quality results. Following your submission of any list you received to the Department, wait for the Department to give any further information and/or guidance. I would not initiate any removal process unless you feel you have verified credible information, and contact the Department, as requested, before taking any steps to begin the removal process, if they have not provided you a notice pursuant to Section 98.075, F.S.

If you receive further contact concerning the list you received before, the best course of action would be to advise you have submitted the names to the Department for review and evaluation. As further information is developed or received, we will advise you.